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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/683,351	12/18/2001	Petra Leber	DE920000097US1	3040

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EXAMINER

RIZZUTO, KEVIN P

ART UNIT	PAPER NUMBER
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2183

DATE MAILED: 08/30/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

09/683,351

Applicant(s)

LEBER ET AL.

Examiner

Kevin P. Rizzuto

Art Unit

2183

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 10 August 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1-10.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See continuation on next page.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____
13. ☐ Other: _____.

Applicant has traversed the combination set forth by Examiner in the 35 U.S.C. 103 rejections of the previous Office Action. Applicant argues:

"Isaman teaches exactly what is described in the instant application in Figure 6. Isaman simply replaces the 'merge' instruction with the 'stitch' instruction. The teachings of Isaman were rejected by the instant application because of the performance loss."

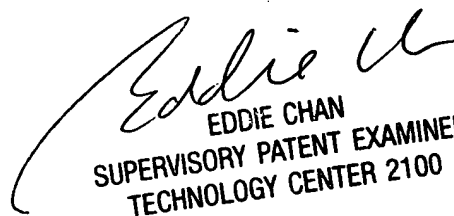
Examiner directs Applicant's attention to the 35 U.S.C. 103 rejection previously set forth. Mahurin teaches wherein the read of the destination register is done before the execution of the detected smaller instruction. [Mahurin, Col. 5, lines 35-54]. Therefore, Mahurin teaches a system that does not execute a "merge" or "stitch" operation or instruction after the smaller result has been produced. As stated in the previously set forth 35 U.S.C. 103 rejection, what Mahurin does not teach, is the "read operation" being implemented as a separate instruction. Instead, it is merely another function performed for the complex instruction. Isaman, however, teaches wherein the "read operation" is performed explicitly by a separate instruction, i.e., the stitch instruction. The aspect of Isaman that is being combined with Mahurin is the fact that the read operation should be implemented as a separate instruction; it should not be a requirement for the first (smaller) instruction to perform the read. This will convert the first instruction into a simpler instruction, thus reducing the hardware, as stated in the 35 U.S.C. 103 rejection. Examiner acknowledges that Isaman teaches a similar solution to the admitted prior art by Applicant, however, Examiner also notes that the admitted prior art would most likely also provide teachings to modify Mahurin in the manner Isaman does. To reiterate, the only substantial aspect of Isaman that is being combined with Mahurin, is that a separate instruction is dispatched, issued and executed in order to perform the read of the destination register, and motivation has been provided to do so.

"The Examiner argues that the Applicant is not arguing a limitation in the claim. However, by showing the flaws of the previous references, the Applicant is establishing that the Examiner is simply picking and choosing pieces of the prior art using the benefit of hindsight reasoning. In particular, the description of Isaman is clearly flawed. The addition of Mahurin is irrelevant because Mahurin does not teach resolving the performance loss of Isaman. The Examiner cannot simply dismiss those flaws by combining references in any manner he so chooses."

1. The "flaws" of Isaman, as Applicant has stated in the specification, have been addressed by Mahurin. Contrary to Applicants' allegation, Mahurin is very relevant, because it is taught wherein the read of the destination register is not done subsequently to the first (smaller) instruction. In fact, the read operation is inserted into the instruction stream prior to the first (smaller) instruction, and it is dispatched in parallel to the first smaller instruction (The register read occurs when the first (smaller) instruction is sent from the decode unit). This specifically overcomes the "flaws" Applicant has laid out in regard to the prior art of figure 6, that is, Applicant states, "the drawback of the solution is that due to the execution of the merge instruction at least one extra cycle is added before the R1 data is available" [Spec. page 8, paragraph 45]. Therefore, the flaws were not "simply dismiss[ed]" and combined in any manner saw fit.

2. In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

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